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Steven Lee Boehmke

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STETINA BRUNDA GARRED & BRUCKER
75 ENTERPRISE, SUITE 250
ALISO VIEJO, CA 92656

EXAMINER

WAGGENSPACK, ADAM J

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/678,912	Applicant(s) BOEHMKE, STEVEN LEE	
	Examiner ADAM WAGGENSPACK	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 16 November 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5 and 7-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5 and 7-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification does not support the rigid support means and article support basket being configured to cantilever the article support basket from the steering means via the two laterally spaced arms; the article storage basket being connected to the bicycle independent of a connection between the article storage basket and the frame; the article storage basket being formed independently of a connection extending directly between the bicycle frame and one of the tubular rim, the bottom wall, and the sidewall; the various walls being planar/formed of a continuous planar member.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-2, 4-5, 7-11, 14, 19, 20 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

With Respect to Claims 1 and 20

The specification does not describe the basket as being cantilevered, or what this term means in relation to applicant's invention.

With Respect to Claims 10 and 14

The specification does not describe the article storage basket being connected to the bicycle independent of a connection between the article storage basket and the frame.

With Respect to Claim 19

The specification does not describe the article storage basket being formed independently of a connection extending directly between the bicycle frame and one of the tubular rim, the bottom wall, and the sidewall

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-2, 4-5, and 7-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With Respect to Claims 1 and 20

Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term "cantilever" in claims 1 and 20 is used (as best understood by

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Examiner based on applicant's arguments) by the claim to mean "supported at only one end", while the accepted meaning is "projecting from a vertical support." The term is indefinite because the specification does not clearly redefine the term. Applicant's rigid support means do not appear to be a vertical support, and project from horizontal handlebars rather than a vertical support.

With Respect to Claims 10 and 14

It is unclear how applicant's article storage basket is connected to the bicycle independent of a connection between the article storage basket and the frame. It is unclear what structure this claim is meant to encompass, as the language used appears to require a second connection between the article storage basket and the bicycle in addition to the article storage basket's connection to the frame. However, since it uses the term "wherein" rather than "further comprising", it is unclear whether this requires any additional structure or if it encompasses the article storage basket being connected to the bicycle via the structure required by claim 1, and this connection being independent of any other connections between the basket and the frame. For the purposes of examination on the merits, Examiner takes the claim to encompass any of these interpretations.

With Respect to Claim 19

It is unclear how Applicant's invention has a basket formed independently of a connection extending directly between the bicycle frame and one of the tubular rim, the bottom wall, and the sidewall, as Applicant's invention does not appear to have a connection that directly extends as claimed.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-2, 4-5, and 7-10, 12-14, 17, and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent #2,554,865 to Lydick (Lydick). Lydick discloses:

In Respect to Claim 1

The wheeled vehicle as claimed (bicycle, FIGS. 1 and 2); an article storage basket (10) located above the front wheel (FIG. 2); rigid support means (15) permanently securing said basket to said manual steering means (handle bars 12 and clamps 11); said rigid support means comprising two laterally spaced arms (portions of 15 between the rim rod and the clamps 11) extending as claimed, the rigid support means and article support basket configured to cantilever the article support basket from the steering means via the two laterally spaced arms (inasmuch as they extend from the steering means which includes a vertical support, FIG. 1); each said arm having a first welded connection to the steering means (Col. 2 lines 5-8) and a second welded connection to the basket (Col. 1 lines 54-55 and Col. 2 lines 1-2).

In Respect to Claim 2

Each said arm is tubular (FIGS. 1 and 2).

In Respect to Claim 4

The manual steering means comprises a set of handlebars (12) joined to a transverse central bar (14), said laterally spaced arms (15) extending between said transverse bar and said basket (FIG. 2).

In Respect to Claim 5

Each said arm is tubular (FIGS. 1 and 2).

In Respect to Claim 7

The basket has the claimed walls (FIGS. 1 and 2); each said arm having a length such that the basket rear wall is spaced an appreciable distance forward from said transverse central bar (FIGS. 1 and 2).

In Respect to Claim 8

The basket rear wall is located directly above the front wheel rotational axis (FIG. 2).

In Respect to Claim 9

The basket comprises an endless tubular rim (10a) that forms an upwardly-open mouth for the basket (FIGS. 1 and 2); said laterally spaced arms being joined to said tubular rim via said second permanent connections (Col. 1 lines 54-55 and Col. 2 lines 1-2).

With Respect to Claim 10

The article storage basket is connected to the bicycle (via 16, FIGS. 1 and 3) independent of a connection (via 11 or 15, FIG. 1) between the article storage basket and the frame.

With Respect to Claim 12

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An article storage basket (10) comprising an endless tubular rim (10a, FIG. 1), the claimed walls (FIGS. 1 and 2); a pair of arms (15, 13, 11a; alternately just 15) welded to the tubular rim (Col. 1 lines 54-55 and Col. 2 lines 1-2) and weldable to the handlebar (they are made of metal and so are weldable to the extent broadly claimed; alternately taking 13 and 11a to be part of the handlebar, weldable as they are welded together, Col. 2 lines 5-8); the pair of arms and tubular rim collectively configured as claimed (FIG. 1).

With Respect to Claim 13

The pair of arms and tubular rim are configured as claimed (FIG. 1).

With Respect to Claim 14

The article storage basket is connected to the bicycle (via 16, FIGS. 1 and 3) independent of a connection (via 11 or 15, FIG. 1) between the article storage basket and the frame.

With Respect to Claim 17

Each of the pair of arms (15) is tubular (FIGS. 1 and 2).

With Respect to Claim 19

The basket is formed independent of a connection extending directly between the bicycle frame and one of the tubular rim, the bottom wall and the sidewall (inasmuch as the basket is not permanently attached via such a direct connection to any of these).

With Respect to Claim 20

The tubular rim is cantilevered from the frame (inasmuch as it is connected to the frame which is a vertical support).

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With Respect to Claim 21

An endless tubular rim (10a); a sidewall (FIG. 1) coupled to the tubular rim; a bottom wall coupled to the sidewall (FIGS. 1 and 2); a pair of arms (15) welded to the tubular rim (Col. 1 lines 54-55 and Col. 2 lines 1-2) and weldable to the stem (12, weldable as they are made of metal); and a clamp (11) coupled to the pair of arms and engageable with the handlebar (FIGS. 1 and 2).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 11, 15, 16, 18 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lydick.

With Respect to Claims 11, 15, 16, and 22

Lydick discloses that the basket is formed from wire, and so does not disclose that the sidewall or bottom wall are formed of a continuous planar member.

However, Examiner takes official notice that it is well known in the art to make containers out of walls formed from continuous planar members.

It would have been obvious to one of ordinary skill in the art at the time of the invention to replace the wire frame structure of the basket with solid walls made of continuous planar members in order to prevent small items from falling through the

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openings between the wires and as a mere substitution of one art known container structure for another.

With Respect to Claim 18

Lydick discloses that the wire frame is attached to the rim and that welding is an art known attachment means for wire, but does not disclose how the sidewall is attached to the tubular rim.

However, it would have been obvious to one of ordinary skill in the art at the time of the invention to attach the sidewall to the rim via welding, as a mere selection of an art appropriate attachment means to use.

10. Claims 11, 15, 16, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lydick as applied to claims 4, 12, and 21 above, and further in view of either U.S. Patent #5,375,748 to Katz or U.S. Patent #4,315,583 to Hine (Hine).

With Respect to Claims 11, 15, 16, and 22

Lydick discloses that the basket is formed from wire, and so does not disclose that the sidewall or bottom wall are formed of a continuous planar member.

However, Katz discloses a container having a sidewall and bottom wall formed from continuous planar members (FIGS. 2, 10, and 11), and Hine discloses a pack having planar sidewalls that hangs from a rim suspended from bicycle handlebars (FIG. 1).

It would have been obvious to one of ordinary skill in the art at the time of the invention to replace the wire frame structure of the basket with solid walls made of continuous planar members as taught by Katz or Hine, in order to prevent small items

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from falling through the openings between the wires and as a mere substitution of one art known container structure for another.

Response to Arguments

11. Applicant's arguments filed 11/16/10 have been fully considered but they are either not persuasive or are moot in view of the new ground(s) of rejection. Examiner will address those arguments which are not moot in view of the new ground(s) of rejection.

12. In response to Applicant's argument that Lydick does not disclose an article support basket that is cantilevered from the bicycle steering means, "cantilever" means "any rigid structural member projecting from a vertical support, esp. one in which the projection is great in relation to the depth, so that the upper part is in tension and the lower part in compression" (cantilevered. (n.d.). *Dictionary.com Unabridged*. Retrieved January 26, 2011, from Dictionary.com website:

<http://dictionary.reference.com/browse/cantilevered>). As such, the basket is cantilevered inasmuch as the arms are rigid structural members that project from a vertical support (the stem of the bicycle handlebars).

13. In response to Applicant's argument that Lydick does not disclose an article support basket that is welded to the steering means of the bicycle, Applicant's claims do not require that the article support basket be welded to the steering means of the bicycle. Claim 1 requires that the arms have a permanent connection to the steering means that is a welded connection. It is Examiner's position that the welding of the arms to the clamps is sufficient to meet this claim language, either because the clamps

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can be taken to be part of the handlebars, or because the welding to the clamps represents a permanent connection to the steering means when the clamps are attached to the steering means. Claim 12 does not require a welded connection, but merely that the arms be weldable to the handlebar, which they are as they are made of metal.

14. In response to Applicant's argument that the clamps (11) of Lydick are detachably affixed, it is Examiner's position that a clamp with screws and bolts can serve to permanently affix two items together, even if it is possible to detach the two items with some effort.

15. In response to Applicant's arguments related to the new claims, see Examiner's rejections of those claims above.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patents #2,764,329 and #2,253,649 disclose bicycle handlebar mounted carriers that are supported only by a single connection to the handlebars.

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ADAM WAGGENSPACK whose telephone number is (571)270-7418. The examiner can normally be reached on Mon-Fri 9 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. W./
Examiner, Art Unit 3782

/Justin M Larson/
Primary Examiner, Art Unit 3782
1/31/11